

**\*E-FILED - 2/12/09\***

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

THOMAS MCCOY,	)	No. C 09-0058 RMW (PR)
	)	
Petitioner,	)	ORDER OF DISMISSAL;
	)	INSTRUCTIONS TO CLERK
v.	)	
	)	
WARDEN B. CURRY,	)	
	)	
Respondent.	)	
_____	)	

This action was opened when petitioner, a state prisoner proceeding pro se, filed a 28 U.S.C. § 2254 petition on January 7, 2009. Petitioner's letter, also dated January 7, 2009, states that he re-filed the petition because his earlier case, C 08-4687 RMW (PR), was dismissed for failing to pay the filing fee.

On December 30, 2008, the court received a \$5.00 filing fee in Case No. C 08-4687 RMW (PR), attached to a letter from the Correctional Training Facility in Soledad stating that the failure to submit payment of a filing fee was the fault of the prison system's accounting system, and not the failure of petitioner. As such, on January 23, 2009, the court sua sponte re-opened petitioner's case in Case No. C 08-4687 RMW (PR), and ordered respondent to show cause why the petition should not be granted.

Accordingly, because the instant case is now duplicative of Case No. C 08-4687 RMW

1 (PR), the instant action is DISMISSED.

2 The clerk shall close the file.

3 IT IS SO ORDERED.

4 DATED: 2/10/09

  
RONALD M. WHYTE  
United States District Judge